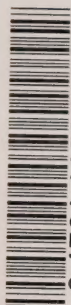


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Canada. Restrictive Trade  
Practices Commission  
Report concerning alleged  
price discrimination between  
retail hardware dealers in North  
Bay, Ont.





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## RESTRICTIVE TRADE PRACTICES COMMISSION

### REPORT

Concerning Alleged Price Discrimination  
between Retail Hardware Dealers in  
North Bay, Ontario

DEPARTMENT OF JUSTICE  
OTTAWA  
1953





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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

HARDWARE

ALLEGED PRICE DISCRIMINATION BETWEEN  
TWO RETAILERS  
IN NORTH BAY, ONTARIO

---

COMBINES INVESTIGATION ACT

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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.  
Chairman

Guy Favreau, B.A., LL.B.  
Member

A. S. Whiteley, B.A., M. A.  
Member





RESTRICTIVE TRADE PRACTICES COMMISSION  
Ottawa

May 28, 1953.

Honourable Stuart S. Garson, Q. C.,  
Minister of Justice,  
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with alleged price discrimination between two retailers in North Bay, Ontario, in the sale of certain hardware products by General Steel Wares Limited.

The inquiry was initiated by the Commissioner of the Combines Investigation Act before the coming into force on November 1, 1952, of Chapter 39 of the Statutes of Canada, 1952, and the matter was brought before the Commission under the transitional provisions of the said Chapter 39 and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Combines Investigation Act, as amended.

Argument was heard by the Commission at Ottawa on March 5, 1953, when Mr. S. F. Sommerfeld appeared on behalf of the Director of Investigation and Research, and Mr. Hazen Hansard, Q. C., appeared on behalf of General Steel Wares Limited.

Yours faithfully,

(Sgd.) C. R. Smith

Chairman





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## CHAPTER I

### INTRODUCTION

#### 1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission under the transitional provisions of Chapter 39 of the Statutes of Canada, 1952. The relevant provisions are found in Subsections (1) and (4) of Section 10 of said Chapter 39, and read as follows:

"(1) Where, prior to the coming into force of this Act,

- (a) the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act,
- (b) no report had been made under subsection one of section twenty-seven of that Act, and
- (c) the Commissioner had exercised any of the powers conferred upon him by section twenty-two of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed. "

"(4) In the case of an inquiry or investigation referred to in subsection one . . . of this section, the Commissioner of the Combines Investigation Act, or the special commissioner, as the case may be, may, instead of making a report as therein provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission and to each person against whom an allegation is made therein, and for the purposes of the Combines Investigation Act, as amended by this Act, such statement shall be deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act. "

Prior to the coming into force of the said Chapter 39, the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act and had caused a number of witnesses to be examined under oath, but no report had been made by him under Subsection (1) of Section 27 of that Act.

After the said Chapter 39 came into force on the 1st day of November, 1952, the Commissioner, now the Director of Investigation and Research under the Combines Investigation Act, acting under Subsection (4) of Section 10 of said Chapter 39,





submitted to the Restrictive Trade Practices Commission a statement of evidence, dated the 10th day of January, 1953, and containing the following allegations:

1. That General Steel Wares Limited, a corporation engaged in trade, commerce or industry, during the years 1949, 1950 and 1951, made sales of goods to Richardson's Hardware as purchaser, which sales discriminated, to the knowledge of the said General Steel Wares Limited, against Stan Richardson Hardware, a competitor of the said purchaser, in that discounts or rebates were granted to the said Richardson's Hardware by the said General Steel Wares Limited over and above any discounts or rebates available from the said General Steel Wares Limited to the said Stan Richardson Hardware at the time of such sales in respect of sales of goods of like quality and quantity, contrary to the provisions of Section 498A(a) of the Criminal Code of Canada.
2. That during the period between March 1, 1949, and November 13, 1952, Richardson's Hardware was granted a discount of 10% on all purchases of hardware of the category classified by General Steel Wares Limited as "wares". Such discount was allowed on each individual purchase at the time of the purchase. During the same period Stan Richardson Hardware was offered a sliding scale of rebates based upon his yearly purchases from General Steel Wares Limited as follows:

|                           |       |
|---------------------------|-------|
| \$2000 to \$3000 per year | - 5%  |
| \$3001 to \$5000 per year | - 7½% |
| Over \$5000 per year      | - 10% |

Such rebates were payable only at the end of each year.

3. Upon the assumption that all purchases whatsoever from General Steel Wares Limited were taken into account in determining the rebate scale applicable to wares, then the conclusion follows that there was available to Richardson's Hardware a discount of 10 per cent off the face of the invoice which was never available to Stan Richardson who could only hope, on the basis of the same purchases as Richardson's Hardware to obtain a rebate in like amount at the end of the year. The conclusion also follows that Stan Richardson Hardware could not, by purchasing wares of like quality and quantity to those purchased by Richardson's Hardware and in respect of which the latter firm received a discount of 10%, obtain a rebate equivalent to Richardson's Hardware's discount because the discount rate applicable to that firm was increased by reason of purchase of goods other than wares.





4. Upon the assumption that the purchases which determined the rebate rate on wares were purchases of wares only, the conclusion is that Richardson's Hardware was in fact obtaining a discount of 10 per cent on a volume of purchases which would have yielded Stan Richardson Hardware only  $7\frac{1}{2}$  per cent.

## 2. Hearings and Witnesses

The Commissioner of the Combines Investigation Act had caused witnesses to be examined before J. J. Quinlan, Combines Investigation Officer, at North Bay, Ontario, on October 27, 1952, and at Toronto, Ontario, on November 13, 1952. Orders for the attendance of witnesses at the latter place had been issued prior to the 1st day of November, 1952. The following persons gave evidence:

### A - at North Bay

John Stanley Richardson, Proprietor of Stan Richardson,  
Furniture-Hardware, 177 Main Street West, North Bay;

Willard Peard Richardson, Partner, Richardson's  
Hardware, 188 Main Street West, North Bay.

### B - at Toronto

James H. McIlroy, Vice-President in charge of sales,  
General Steel Wares Limited;

Michael M. Miller, Divisional Sales Manager, Plumbing  
and Heating and Stoves, General Steel Wares Limited.

The hearing of argument before the Commission was held at the City of Ottawa on the 5th day of March, 1953. On that date General Steel Wares Limited was afforded full opportunity to be heard and the Corporation was represented by counsel, who made representations on behalf of General Steel Wares Limited.



## CHAPTER II

### DEALINGS OF GENERAL STEEL WARES LIMITED WITH RICHARDSON'S HARDWARE AND STAN RICHARDSON HARDWARE

#### 1. Situation Prior to 1945

General Steel Wares Limited is a manufacturer of metal products and household appliances and has its Head Office in the City of Montreal and its Executive Offices in the City of Toronto. General Steel Wares Limited was incorporated in October 1927 under the Canadian Companies Act, as a consolidation of eight manufacturing companies which had been engaged in similar lines of activity. Mr. J. H. McIlroy, Vice-President in charge of Sales, stated in evidence:

"In our internal organization we have our business divided into four or five different divisions. We have what we call the Wares Division; what we call the Heating and Plumbing Division; what we call the Kitchen Equipment and Contract Division."

(Evidence, p. 108)

Products which the Company makes to be resold by merchants to the public are supplied to jobbers and department stores and also directly by the Company to retailers. Different systems of list prices and terms of sale are employed by the Company in connection with the various classes of its products.

Among the customers of General Steel Wares Limited has been a retail hardware store located at 188 Main Street West, North Bay. Goods have been supplied to this store by General Steel Wares Limited since the latter began operations in 1927 and prior to 1927 by one or more of the predecessor companies which were merged into General Steel Wares Limited. Up until 1938, the retail store at 188 Main Street West, North Bay, was operated by Mr. J. W. Richardson under the name of J. W. Richardson Hardware. After his death in 1938 the store was continued under the name J. W. Richardson Hardware by his estate, which was shared by two sons, John Stanley Richardson and Willard Peard Richardson and their two sisters. Mr. J. S. Richardson acted as Manager of the furniture department of the business which was conducted on the second storey of the premises. It is indicated by the evidence that J. W. Richardson Hardware had enjoyed discounts on purchases from General Steel Wares Limited and from its predecessor companies but the exact nature of such discounts at the earliest period is not disclosed by the evidence. For some years prior to 1945, however, and during some if not all of the period when the business was being operated by the Estate, General Steel Wares Limited gave a discount of 10 and 5 per cent on purchases by J. W. Richardson Hardware of classes





of hardware goods known as "wares". While the evidence does not provide a precise definition of the term "wares", it is a term recognized in the hardware trade and certain groups of products were taken by General Steel Wares Limited as the products on which the "wares" discount would be allowed, and the term for discount purposes embraces such lines of kitchen goods as granite, enamel and tinware and also such products as kitchen bread boxes, dust-pans and other light metal products including stove pipe. There are some differences in the recollections of certain witnesses as to the date when the particular discount was first introduced. Mr. W. P. Richardson stated in evidence that a discount of some kind had been given to his father by one or more of the constituent companies which went to form General Steel Wares Limited and that similar concessions had been given since the formation of General Steel Wares Limited. However, Mr. W. P. Richardson also stated that the particular discount of 10 and 5 per cent on "wares" had been granted by General Steel Wares Limited after the death of his father. On the other hand, in a company memorandum dated December 2, 1949, Mr. J. H. McIlroy, then General Sales Manager of General Steel Wares Limited, wrote that the J. W. Richardson Hardware had been granted a discount of 10 and 5 per cent in the early 1930's (Exhibit 36). The discount rate of 10 and 5 per cent was a successive discount so that the actual net discount was 14.5 per cent.

Mr. W. P. Richardson stated that the discount had been sought about 1940 by J. W. Richardson Hardware in order to place the firm in a position to compete with certain other hardware firms doing business in North Bay. He further stated in evidence that the discount was granted by General Steel Wares Limited "because of the volume we were doing and because we offered to take on stoves which would increase our volume up to a figure they thought sufficient to earn ten and five," (Evidence, p. 67).

In 1945 and for some years previously the discount on "wares" was given by General Steel Wares Limited on the face of the invoice on sales to J. W. Richardson Hardware and the fact that such a discount had been given was known to J. S. Richardson.

## 2. Establishment of Richardson's Hardware and Stan Richardson Hardware in 1945

A fire occurred in the premises of the J. W. Richardson Hardware store on January 2, 1945, and there was extensive damage to the roof and upper storey as well as water damage on the ground floor. Shortly thereafter, steps were taken by the members of the family of the late J. W. Richardson to divide the business. Under an agreement made March 29, 1945, J. S. Richardson purchased the furniture salvage from the estate and the three other members of the family purchased the hardware salvage. On or about April 1,





1945, a partnership agreement was entered into among Willard Peard Richardson, Ellen G. Shepherd, Leola May Gray and John Richardson Shepherd to operate a hardware business under the name Richardson's Hardware at 188 Main Street West, North Bay. Richardson's Hardware rented the lower part of the store from the Richardson estate and J. S. Richardson rented the upper part of the store to carry on a business as Stan Richardson Furniture-Hardware. Within a few months, Mr. J. S. Richardson rented other store premises across the street at 177 Main Street West, North Bay, and for a time carried on business at both locations.

Some months after Mr. J. S. Richardson commenced a hardware business on his own, he asked Mr. C. C. Jackson, Salesman of General Steel Wares Limited who covered North Bay, for the same discount on "wares" as had been received by the J. W. Richardson Hardware. In evidence, Mr. J. S. Richardson stated he was informed by Mr. C. C. Jackson that no discount was being given by the Company. Some time later, perhaps in 1946, Mr. J. S. Richardson, in the course of certain court proceedings, had access to invoices covering goods supplied to Richardson's Hardware, and found that General Steel Wares Limited was allowing a discount of 10 and 5 per cent on the face of the invoices on sales to Richardson's Hardware.

In possession of the information that Richardson's Hardware was being given a discount of 10 and 5 per cent by General Steel Wares Limited, Mr. J. S. Richardson approached Mr. O. P. MacLean, then Ontario Sales Manager of the Company, to seek the same discount on his purchases as was being given by General Steel Wares Limited to Richardson's Hardware. Mr. J. S. Richardson stated in evidence that he visited Mr. MacLean in his office at Toronto and was informed that the discount arrangement of 10 and 5 per cent had been terminated and that there was a new set-up under which the maximum discount was 10 per cent. Apparently Mr. J. S. Richardson communicated further with Mr. O. P. MacLean, and the latter wrote to him on September 30, 1947, as follows:

"Following up our letter of September 22nd, we have gone into the matter of discount. Your letter would have been answered sooner but the writer was tied up with a Branch Managers' Meeting last week.

The best we would be able to consider at this time, Mr. Richardson, would be a rebate. We would put this into effect as of the first of 1948. This rebate is based on your yearly purchases. If your purchases from us amount to \$1000.00 to \$2000.00 per year - 5%; over \$2000.00 to \$3,000.00 - 7½%; \$3,000 and over - 10%. No rebate to be allowed unless your yearly purchases would reach a minimum of \$1000.00



Will you think this over and let us hear from you."

(Exhibit 1)

Mr. J. S. Richardson stated in evidence that he did not accept this offer because he wanted the same discount of 10 and 5 per cent off the face of the invoice that had been given to Richardson's Hardware.

At a later time, the exact date of which is not disclosed by the evidence, Mr. J. S. Richardson received information that the basis for rebate outlined in Mr. MacLean's letter of September 30, 1947, had been revised (Exhibit 2).

According to the memorandum of Mr. J. H. McIlroy, already referred to (Exhibit 36), such a revision was made effective in January 1948. Referring to a letter of April 29, 1948, from Mr. J. S. Richardson to General Steel Wares Limited (Exhibit 2) Mr. McIlroy wrote:

"(D) He makes the statement in his letter of April 29th that later this rebate basis was further revised, giving him less favourable terms. This is, in effect, correct as in January, 1948, the writer instructed all sales managers as follows: --

'You have certain rebate arrangements with retailers that are on a sliding scale of purchases. Our price levels are now substantially higher than when the amounts were decided on in pre-war years. We would, therefore, like the sliding scale of discounts on any rebate contracts which you renew for 1948 to be as follows: --

5% on purchases of \$2,000 - \$3,000  
7½% on purchases of \$3,001 - \$5,000  
10% on purchases of over \$5,000

It is to this that he has reference. The former sliding scale, and the one that he was originally offered was --

\$1,000 - \$2,000 5%  
\$2,001 - \$3,000 7½%  
\$3,000 and over 10% "

(Exhibit 36)

In April 1948, the Post Office inadvertently delivered to Stan Richardson Hardware a General Steel Wares invoice covering a shipment to Richardson's Hardware. It would appear from the invoice that it was treated at first as though it covered a shipment to the Stan Richardson business, and only subsequently was it noticed that an error in delivery had been made. The invoice in





question showed that a discount of 10 and 5 per cent off the face of the invoice was being given to Richardson's Hardware. On becoming aware of this situation Mr. J. S. Richardson wrote on April 29, 1948, to the General Manager of General Steel Wares Limited, and stated that on the occasion of his discussion with Mr. MacLean he had been informed that the discount to Richardson's Hardware would be reduced and that no discounts were being deducted from invoices, but that rebates would be given at the end of the year on the basis of the quantity of goods purchased. Mr. J. S. Richardson referred in strong terms in his letter to what he regarded as the unfair treatment of him by General Steel Wares Limited. He concluded his letter by stating "I am advising you that unless I receive within one week a proper rebate, on all my purchases to date, I will take immediate action to secure fair play" (Exhibit 2). Mr. J. S. Richardson wrote on the same date and in the same terms to the General Sales Manager and the Ontario Sales Manager of General Steel Wares Limited. The receipt of his letter was acknowledged by Mr. W. F. Holding, then Vice-President and Managing Director, on May 3, 1948 who wrote that the substance of the letter had been discussed with the Company's General Sales Manager and Ontario Sales Manager and that the former would communicate the Company's conclusions to Mr. J. S. Richardson. Mr. J. H. McIlroy, then General Sales Manager, wrote to Stan Richardson Hardware on May 5, 1948, as follows:

"This will acknowledge receipt of your letter of April 29th, dealing with the basis on which you have been purchasing our merchandise.

After giving full consideration to everything you say, and also checking into your purchases, we have arrived at the conclusion that the only basis on which we can sell you our merchandise is at the current net trade prices existing at time of shipment with no additional discounts whatsoever.

We trust there will be no further misunderstanding in this regard and thank you for your valued business in the past."

(Exhibit 3)

Mr. J. S. Richardson made a lengthy reply to Mr. McIlroy's letter on May 6, 1948, in which he outlined the various steps which he proposed taking before the Tariff Board, Wartime Prices and Trade Board, and in other ways in an effort to secure a reduction in customs duties on products similar to those made by General Steel Wares Limited and to secure what he termed "proper discounts".

On May 7, 1948, Mr. O. P. MacLean, Ontario Sales Manager, General Steel Wares Limited, wrote to Mr. Willard Richardson, Richardson's Hardware, to inform him that General





Steel Wares Limited could not continue with the discount of 10 and 5 per cent on "wares" being allowed to Richardson's Hardware. His letter was as follows:

"For some time you have been enjoying a special discount on Wares Lines of 10 and 5%. We are very sorry to have to advise you that we cannot continue with this discount. You know, of course, there is a discount arranged for you by us on Stoves, Electric Refrigerators, Ice Boxes, and other items. These are not included as Wares Items for they carry a special discount.

We will be pleased, however, to extend to you the following discount on your yearly purchases of Wares, purchased at regular trade prices, in the form of a sliding scale rebate discount payable yearly on your yearly purchases of Wares.

If your yearly Wares purchases total \$2,000.00 your special discount would be 5%. If, however, your yearly Wares purchases total over \$5,000.00 your special discount would be 10%, and we submit the following on your total yearly purchases of Wares:

|                               |          |
|-------------------------------|----------|
| From \$2,000.00 to \$3,000.00 | - 5%     |
| \$3,001.00 to \$5,000.00      | - 7-1/2% |
| Over \$5,000.00               | - 10%    |

By this sliding scale you will note it arranges for three brackets with a maximum discount of 10%. The costs of manufacturing have increased so much during the past year, we find it impossible to extend any better discount than 10% maximum.

Your purchases since January 1, 1948, while you have already been allowed discount of 10 and 5% will be considered as quantity in arranging your rebate.

We are sorry, Mr. Richardson, that we have to change this set-up that has been in effect now for some time, but we feel you will appreciate our situation at the present time in regard to high costs of manufacture."

(Exhibit 27)

On the same day, May 7, Mr. MacLean wrote to Stan Richardson acknowledging the letter of April 29 and stating that Mr. J. H. McIlroy would be writing to him (Exhibit 35).

Mr. Willard Richardson wrote on May 8, 1948, to Mr. O.P. MacLean, acknowledging the latter's letter of May 7, and stating that the discount of 10 and 5 per cent had been given to permit competition with other firms selling hardware in North Bay



and that he saw nothing which would warrant any change in the discount arrangement with General Steel Wares Limited. He asked for reconsideration of Mr. MacLean's letter of May 7 and then inquired whether Stan Richardson had written to the Company in regard to the discount (Exhibit 28). Mr. O. P. MacLean, replying on May 11 to the letter from Mr. Willard Richardson, wrote that he would like to discuss it with the Company's General Sales Manager, Mr. J. H. McIlroy, who was then absent from Toronto. A further reply was made by Mr. O. P. MacLean on June 10, in which he stated that he had discussed Mr. Willard Richardson's letter of May 8 with the Company's General Sales Manager. He went on to say that, although Stan Richardson had corresponded with the Company in regard to discounts, the incident had had no bearing on the Company's decision to revise the discounts given to Richardson's Hardware. His letter contained the following:

" . . . For some time now we have been engaged in standardizing discounts based on customers' volume.

Because of the change of ownership in the old Richardson Hardware, we overlooked the fact that you were still receiving 10/5% discount in your new business. Frankly, the volume of business transacted with the original Richardson's Hardware, or your present Company, does not warrant full jobbers discount such as you have been enjoying. The proposition which we submitted to you in our letter of May 7th would indicate that you should have little or no difficulty in purchasing enough wares to warrant your receiving a 10% discount, and we are of the opinion that this should put you in a position to service the type of business you outline in your letter, namely Lumber Camps, etc.

While our proposition submitted to you in our letter of May 7 of sliding scale discount is paid either quarterly or yearly, from our records we feel that you would very definitely qualify for 10%, and we are prepared to make an exception in your case and allow this 10% from the face of the invoice. "

(Exhibit 31)

Mr. MacLean concluded his letter by saying that if Mr. Willard Richardson wished to discuss the matter personally he would be glad to see him if he came to Toronto and, if he did not, there might be an opportunity when Mr. MacLean made a trip to the northern part of the province. Mr. Willard Richardson, acknowledging this letter on June 12, indicated that he would like to talk over the matter with Mr. MacLean and that if he did not go to Toronto he asked that Mr. MacLean keep the matter in abeyance until there was an opportunity to discuss it during his proposed visit to North Bay (Exhibit 32).





Mr. Willard Richardson's letter of June 12 was acknowledged by Mr. J. H. McIlroy on June 16, when he wrote to Mr. Willard Richardson that Mr. O. P. MacLean had been taken seriously ill. Mr. McIlroy went on to say that he did not think it would be possible for Mr. MacLean to make the proposed trip to the North and he did not recommend that Mr. Willard Richardson should then make a special trip to Toronto to discuss the matter of discounts, but he suggested that sometime in the Fall it might be possible for Mr. Richardson to have a discussion with the representatives of the Company in Toronto.

With reference to the proposal made in Mr. MacLean's letter of May 7, Mr. McIlroy stated, in part:

" . . . Actually the previous arrangement with J. W. Richardson Hardware was out of line when the sales figures are studied.

I feel that the proposition outlined to you in Mr. MacLean's letter of June 10th is very liberal, and should serve to let you know that we hold you in high esteem and value your business very much. Our record of sales to you over the years 1940 - 1944 when goods were very scarce, is indicative of this. With the addition of new lines, our franchise has been an attractive one for you in 1945-46-47. I would therefore like to have your assurance that you would carry on with us on the basis now proposed."

(Exhibit 33)

Mr. Willard Richardson replied to Mr. McIlroy's letter on June 19 and said that he would plan to visit Toronto after the tourist season and take up the matter of discounts with the Company at that time (Exhibit 34).

There appears to have been no further communication between Richardson's Hardware and General Steel Wares Limited in regard to the general basis of discounts which would be granted by the latter on purchases of "wares" by Richardson's Hardware, and General Steel Wares Limited appears to have continued the discounts of 10 and 5 per cent which had been given previously. There were some intra-company memoranda between Mr. C. C. Jackson, the Company's salesman, and officials in the Toronto office of the Company in regard to the inclusion of aluminum ware among the goods subject to discount. Although the rate of 10 per cent is mentioned in a memorandum of September 27, 1948, from Mr. MacLean to Mr. Jackson (Exhibit 35), it appears that the discount of 10 and 5 per cent was given.

It also appears that there were no further communications between Mr. J. S. Richardson and General Steel Wares



Limited in regard to discounts during the remainder of the year 1948. However, on August 11, 1948, Stan Richardson Hardware sent an order to General Steel Wares Limited, Toronto, on which a note was inserted stating that the Company's representative had not called for some time and that it would be appreciated if the Company would advise when he would next be in North Bay. Mr. J. J. Heal in the Ontario Sales Division of General Steel Wares Limited wrote a memorandum on August 13 to Mr. C. C. Jackson in which he stated that he was sending him a copy of the order from Stan Richardson and instructing Mr. Jackson to call on him. Mr. Heal stated in his memorandum that, while the Company would be pleased to accommodate Stan Richardson with any goods available, all sales would be made at the Company's regular trade prices and terms (Exhibit 35).

### 3. Situation Since 1948

At the close of 1948 the situation with respect to Richardson's Hardware and Stan Richardson Hardware was that the former was continuing to receive a discount of 10 and 5% on "wares" off the face of the invoice on goods purchased from General Steel Wares Limited. Stan Richardson Hardware had been offered a sliding scale of deferred rebates based on volume of purchases, which had been revised and the offer subsequently withdrawn by General Steel Wares Limited. The offer when originally made had been rejected by Mr. J. S. Richardson, who held that he would not be content with anything less than the discount of 10 and 5% which had been given to J. W. Richardson Hardware when he was a member of it and made applicable to all his purchases from General Steel Wares Limited from the time he had commenced business as Stan Richardson Hardware in 1945.

Although Mr. O. P. MacLean visited North Bay some weeks prior to March 1, 1949, and called on Mr. Willard Richardson, there was no discussion on the change in discount to Richardson's Hardware which had been proposed in 1948. In a memorandum to Mr. C. C. Jackson on March 8, 1949, Mr. MacLean wrote:

"When in North Bay with Wilbur Hastings on the way to Sudbury, the writer called on Willard Richardson but did not say anything to him about discount, for one simple reason, it never entered the writer's head, feeling that the matter had all been straightened out in 1948, but it wasn't."

(Exhibit 35)

On March 1, 1949, Mr. O. P. MacLean wrote to Mr. Willard Richardson, as follows:

"We exchanged some correspondence last Spring regarding changing your discount from 10/5% to 10%."





Just at the time of writing the writer took ill and was away, so we did nothing further about your discount.

The change that we suggested will be put into effect as of today, March 1st . . ."

(Exhibit 35)

At the same time Mr. MacLean instructed officials in the Toronto offices of General Steel Wares Limited to change the basis of invoicing shipments to Richardson's Hardware to a discount of only 10% applying on the invoice (Exhibit 35).

Mr. Willard Richardson replied to Mr. MacLean's letter on March 3 and referred to the correspondence on the question of the discount which he had exchanged with General Steel Wares Limited in 1948. He wrote that he could see no reason for a change and that he would be in Toronto before Easter if Mr. MacLean wished to discuss the matter further. Mr. Willard Richardson concluded his letter as follows:

"In the meantime, unless otherwise advised, do not ship any merchandise affected by your change of discount."

(Exhibit 23)

Mr. MacLean dealt with Mr. Willard Richardson's letter in a reply dated March 7, in which he reviewed the circumstances leading up to the decision to change the rate of discount. At one point he stated:

"We distinctly pointed out in our letter of June 10th, 1948, that Mr. Stan Richardson had nothing to do with this decision, but that we had been engaged in standardizing customers' discounts based on volume of business. 10% is the maximum discount for which a retailer could qualify, and we agreed to make an exception in your case, in that we would allow the 16% from the face of the invoice, as we felt you would qualify for same. These arrangements should have been put into effect after receiving your letter of June 12th, and would have been had the writer not taken ill, and forced to be away from his office for a prolonged period last summer."

(Exhibit 24)

Mr. MacLean told Mr. Willard Richardson that he would be glad to discuss the matter with him in Toronto and that, unless advised specifically, the Company would not make any shipments of goods affected by the discount. Mr. MacLean added that the new scale of discount would go into effect as from March 1, 1949.



Mr. Willard Richardson replied to Mr. MacLean's letter on March 8 and said that he would make an appointment to see him in Toronto some time in April. On April 22, 1949, Mr. M. Miller, in the Ontario Sales Division of General Steel Wares Limited, wrote the following memorandum to Mr. C. C. Jackson in regard to Richardson's Hardware:

"We had a visit from Mr. Richardson the other day and had our difficulties ironed out. Mr. Richardson now understands that he still receives preferential treatment with the 10% we are (he is) getting.

There is a letter in Mr. MacLean's file dated March 31st from Richardson asking us to ship Monarch Oil Stoves at 10/5%. Please explain to Mr. Richardson that Monarch Oil Stoves are regarded as a Wares item and bear the same rebate of 10% as on other Wares lines. This one point we did not go into until it was too late."

(Exhibit 35)

Exhibit 40 includes copies of invoices covering shipments by General Steel Wares Limited to Richardson's Hardware during the year 1949. It appears from these invoices that a discount of 10 and 5% was given off the face of the invoice until February, 1949, and that, commencing in April 1949, a discount of 10% was allowed from the face of the invoice.

On November 25, 1949, Mr. J. S. Richardson wrote a letter to Mr. F. S. Corrigan, then President of General Steel Wares Limited, in which he reviewed the attempts he had made previously to secure the same discount from General Steel Wares Limited that had been given to J. W. Richardson Hardware. He stated that his time had been taken up with other matters but that he wished to have the question of discount to his firm dealt with and he asked Mr. Corrigan to review all the correspondence (Exhibit 35). Mr. Corrigan replied to Mr. J. S. Richardson's letter on November 28 and stated that he did not think that anything could be gained by prolonging the discussion by correspondence. He wrote that, if Mr. J. S. Richardson wished to have a frank discussion, he would be glad to arrange for a meeting in Toronto (Exhibit 35). There was a further exchange of letters between Mr. Corrigan and Mr. J. S. Richardson as to the date on which a meeting might be arranged, and Mr. J. S. Richardson visited the offices of General Steel Wares Limited in Toronto early in 1950. The exact date is not shown by the evidence, but it appears likely that his visit was in January 1950.

Mr. McIlroy was present at the discussion between Mr. Corrigan and Mr. J. S. Richardson, and he said in evidence that at this meeting he had offered him the sliding scale of year-end rebates which had been revised in 1948. Mr. McIlroy stated:





"There was not too much discussion in Mr. Corrigan's office about his particular grievance on the discount except that I did re-state the fact that the sliding scale was our offer. I attempted to ask him if that was acceptable and he more or less just bluffed it off, brushed it off, and there was nothing more said."

(Evidence, p. 118)

Mr. McIlroy was examined on the point whether the discount contained in the offer originally made to Mr. J. S. Richardson would apply to all the goods that Stan Richardson Hardware might purchase or only to the classification known as "wares". He stated:

"Definitely confined to the classification known as wares. We have no such thing as a special or preferred discount on appliances."

(Evidence, p. 111)

He was then asked what basis of purchases would be used to arrive at the volume from which to derive the particular rate of discount. He replied:

"They referred to total purchases. In Mr. Richardson's case, naturally he was not a prospective or potential customer for appliances as such, appliances such as wood stoves being covered on an agency or franchise basis, but while this discount applied on wares only, the total purchases counted for quantity."

(Evidence, p. 112)

Mr. J. S. Richardson apparently renewed his request for a discount of 10 and 5% and Mr. F. S. Corrigan wrote to him as follows on May 19, 1950:

"The writer recently returned to Toronto and now has before him your letter of March 17th in which you request a discount of 10 and 5% on goods purchased from us and are obliged to advise you in reply of our unwillingness to meet your desires in this matter.

We much appreciate the courtesy you extended to us by calling at this office some months ago and can assure you that we shall be glad to be of service to you at any time in the future."

(Exhibit 8)

No further correspondence between Mr. J. S. Richardson and General Steel Wares Limited on the question of



a discount is disclosed by the evidence until November 13, 1951, when Mr. J. S. Richardson wrote as follows to the Company:

"We are enclosing our cheque for \$345.71 to cover your invoice of October 26th.

During the past six years we have received no trade discount on our purchases. We would appreciate if you would advise us as to what discounts you will give us on our past and future purchases. If we are not going to receive any discount we will be just as well off buying through jobbers -- and you will be receiving less on all goods we would purchase through them."

(Exhibit 9)

The following reply to this letter was made on November 15, 1951, on behalf of General Steel Wares Limited by Mr. M. M. Miller, then Ontario Sales Manager:

"Thank you for your letter of November 13th and remittance by cheque to the amount of \$345.71. We are applying this to your account in the usual manner.

With reference to the second paragraph of your letter, we regret we are unable to give consideration to any price concession for your account other than the offer we made to you in the past and which you rejected."

(Exhibit 10)

Mr. J. S. Richardson stated in evidence that earlier in 1951 he had attended the annual meeting of General Steel Wares Limited as a shareholder, and had asked for a general review of the discount policy followed by the Company.

#### 4. Position Taken by General Steel Wares Limited

The senior sales officers of General Steel Wares Limited have taken the position that the discount of 10 and 5 per cent on "wares" had been given to J. W. Richardson Hardware in the early 1930's. Mr. J. H. McIlroy testified that he had had no knowledge of any change in the ownership of J. W. Richardson Hardware prior to 1947 or early 1948 when the changed situation was brought to the Company's attention in connection with the request for a similar discount made by Mr. J. S. Richardson. Mr. J. H. McIlroy stated in evidence:

"We carried on with the ten and five discount that the J. W. Richardson people had been enjoying, as I say under the supposition it was one and the same thing."

(Evidence, p. 120)





When the request for a discount of 10 and 5 per cent was made by Mr. J. S. Richardson, the officers of General Steel Wares Limited reviewed the situation with respect to the discount being granted to Richardson's Hardware. It was suggested by Mr. McIlroy in evidence that the examination of the discount being given to Richardson's Hardware was made by the Company at a time when it was reviewing its general discount policy. Mr. McIlroy stated:

"We were reviewing discounts and that account did not warrant ten and five and we said that the account should be put on the sliding scale basis of ten per cent the same as any other account, that it did not warrant ten and five."

(Evidence, p. 120)

Commenting on the original decision to grant a discount on "wares" to J. W. Richardson Hardware, Mr. J. H. McIlroy said:

"When he was getting ten and five it was applied on the wares part; it was not tied in with any volume at all. Away back in the early thirties there was some competition that was supposed to exist then and in order to enable them to sell to mining camps and lumber camps and people of that ilk, the ten and five was given. When we looked at it the volume seemed very small and did not warrant any discount of that character, so it was decided to change it to the sliding scale."

(Evidence, p. 121)

Although the decision was made by the Company in 1948 to put the discount on "wares" to Richardson's Hardware on the sliding scale basis immediate steps were not taken to implement this decision and the delay was attributed by Mr. J. H. McIlroy to the ill health of Mr. O. P. MacLean, then Ontario Sales Manager.

When the change in the rate of discount was actually made in 1949, a concession was made to Richardson's Hardware in making the discount a current discount rather than a deferred rebate payable at the end of the year. Mr. McIlroy said that this concession was made in an effort to satisfy Mr. Willard Richardson. In his evidence Mr. McIlroy stated:

"I might say that Willard Richardson -- I hope I am not going ahead of you -- he was putting up such a fuss about the thing but he finally agreed to it and took it in good taste but MacLean did make one concession, that he would give it off the face of the invoice rather than have him wait until the end of the year to see what bracket he was qualified for. He did that because of his previous knowledge and long dealings with the firm made him realize right off



that the account would qualify for the maximum discount of ten per cent. So he granted Richardson's Hardware or Mr. Willard Richardson the ten per cent off the face of the invoice when he finally got around to doing it in 1949.

I think Mr. Willard Richardson paid a visit to me to see if he couldn't induce me to go back to the ten and five. We had a very pleasant visit in my office and he went home quite happy that he was being fairly treated. That was that."

(Evidence, pp. 121-122)

In the view of the Company's officers the same basis of discount on "wares" was offered to Mr. J. S. Richardson as that put forward for Richardson's Hardware. During his examination on this point Mr. J. H. McIlroy gave the following evidence:

"Q. As I understand it, it was first proposed to extend to Willard Richardson the sliding scale of rebate?

A. That is right.

Q. Was that the same sliding scale of rebate that had been offered to Mr. Stan Richardson as of 1948 and which was refused?

A. Absolutely. It was absolutely on the same basis, very definitely. That sliding scale applies to anybody."

(Evidence, p. 122)

The fact that the discount to Richardson's Hardware was made off the face of the invoice was justified by the Company on the ground that the Company's experience with purchases by Richardson's Hardware made it clear that such purchases would be on a scale sufficient to entitle this firm to the maximum discount of 10 per cent. When examined on this point Mr. McIlroy stated:

"Q. That is, he would not be required to show beforehand that he had purchased a certain amount in the year?

A. As I say, his past record indicated to MacLean that he would certainly qualify and he has qualified."

(Evidence, p. 122)

In the case of Stan Richardson Hardware the Company felt that it had no way of establishing an opinion in advance as to the volume of purchases of products of the Company which Stan Richardson Hardware might make during any year. Mr. J. H. McIlroy stated in evidence:





"[the company] did not know in 1947 or 1948 whether you were going to be a volume buyer or whether you were just going to have a few of our items. We had no way of knowing. We liked to see the colour of your business volume. That is all we wanted to do."

(Evidence, pp. 156-157)

Apart from the fact that the discount of 10 per cent given to Richardson's Hardware was allowed off the face of the invoice on current purchases and in the case of the offer made to Stan Richardson Hardware there was not a discount but rather a deferred rebate based on a sliding scale of volume of purchases, there was a major distinction in the conditions under which purchases could be made by the two retail stores. Richardson's Hardware had been accepted by General Steel Wares Limited as a franchise dealer for certain of its products which are sold on an agency or franchise basis, and purchases of such lines although not included among the items on which the "wares" discount applied nevertheless were included in the volume of purchases which entitled Richardson's Hardware to receive the maximum rate of discount of 10 per cent. On the other hand, Stan Richardson Hardware was not recognized as a franchise dealer of General Steel Wares Limited and thus his purchases of products made by General Steel Wares Limited could not embrace as wide a range of products as that open to Richardson's Hardware. In the evidence of Mr. J. H. McIlroy already cited, the position of Stan Richardson Hardware is described as follows:

"A. . . . In Mr. Richardson's case, naturally he was not a prospective or potential customer for appliances as such, appliances such as wood stoves being covered on an agency or franchise basis, but while this discount applied on wares only, the total purchases counted for quantity."

(Evidence, p. 112)



## CHAPTER III

### CONCLUSION

#### 1. Legislation Concerning Price Discrimination

Legislation dealing specifically with price discrimination was first adopted by the Parliament of Canada in 1935 following the Report of the Royal Commission on Price Spreads. As a result of the extensive inquiries into methods of distribution begun by the Select Special Committee of the House of Commons in 1934 and continued by the Price Spreads Commission, the conclusion was reached that under the system of mass buying disclosed in the inquiries, various forms of price discrimination were being practised which were not socially advantageous and which tended to weaken competition among businesses of different sizes. The Price Spreads Commission described in its Report the principal forms of discounts which are used in making sales to retailers and recommended that steps should be taken to prevent certain types of price concessions which were considered to be unfair. In regard to quantity discounts the Price Spreads Commission reported as follows:

"Under this general heading are grouped the various kinds of price concessions which are allowed for volume purchases. The nature and description of these concessions vary greatly between different manufacturers and in different industries. The most equitable forms are those which are open to all buyers upon substantially the same terms. There seems little doubt that for many manufacturers large single sales offer real savings in selling or handling costs and are, therefore, extremely advantageous if they can be secured without too great sacrifice. The question naturally arises; are the economies involved in such selling the only basis on which differential discounts are given or is the scale of discounts a reflection of the manufacturer's desire to retain the custom of large buyers whose patronage he believes will not be held unless preferential treatment is accorded them? As has already been stated with reference to trade discounts, discrimination in price can only be justified if it represents lower costs in distribution, but if such discrimination is due only to the superior bargaining power of large buyers, it may be condemned as not socially advantageous and, more narrowly, as a form of unfair competition. But **just what** constitutes unfair price discrimination cannot be determined by any set scale of measurements. For some commodities and to some manufacturers a differential of 5 per cent would represent the maximum economies involved in large orders; in other fields a difference of 15 per cent between large and small orders might be justified. Much less defensible, on economic grounds, are discounts that vary with different purchases on the same quantity, or that





are based on purchases spread over a period such as a year or on an increase in volume of purchases in a period, say, from 4,000 cases to 5,000 cases. In the same class for which little economic justification can be given, are discounts based on the volume of purchases from a group of factories."

(Report, p. 226)

After considering certain other forms of price concession such as free deals and premiums, advertising allowances and demonstrators, the Price Spreads Commission expressed the following conclusion:

"Having considered the more common forms of price discrimination by which mass buyers are able to obtain preferential treatment, it remains only to draw the obvious conclusion. There is little serious objection to discounts, free deals, and allowances when these are available to all on the same terms, and are related to any measurable service rendered, or economy effected. At the worst they simply complicate the problem of accounting and costing. But when such concessions are given not in return for any service, not openly, and not to all on the same terms, they involve gross discrimination and become a powerful weapon by which mass buyers compete unfairly with their small rivals and use their massed purchasing power to take undue advantage of their weak suppliers."

(Report, p. 228)

While the Price Spreads Commission did not feel that it is possible to define unfair trade practices in a rigid way, it considered that certain practices are so clearly unfair as to be capable of direct prohibition. In this connection the Report of the Commission stated:

"We suggest that practices should be prohibited as unfair which are characterized by bad faith, fraud, misrepresentation, or oppression; which are resorted to for the purpose of destroying competition or eliminating a competitor; which facilitate the development of monopoly; or which destroy fair competitive opportunity and prevent the survival of those who can organize and carry on the production of goods most efficiently. It is in this sense that the word 'unfair' should be used in the Act.

Without attempting to restrict the application of this test of 'unfairness' by the Commission, we feel that certain practices which we have examined should very definitely be considered 'unfair' under the Act. They are so widespread and generally condemned that their complete prohibition by



the Commission is justified. We refer specifically to -

- (1) discriminatory discounts, rebates and allowances,
- (2) territorial price discrimination and predatory price-cutting."

(Report, p. 270)

The recommendations of the Price Spreads Commission in regard to price discrimination were carried into effect by the addition in 1935 of Section 498A to the Criminal Code. The Section then adopted read as follows:

"498A. Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or to one month's imprisonment, or, if a corporation, to a penalty not exceeding five thousand dollars, who

- (a) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;
- (c) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor."

There is no record of any court proceedings involving the direct application of Section 498A. However, the legislation was considered by the Committee to Study Combines Legislation and the following comments on the Section are contained in the Committee's Report:





"Paragraph (a) of this section was criticized in the representations we received. The section was enacted in 1935 as a result of the examination by the Royal Commission on Price Spreads into discriminatory practices. Its purpose, in part, is to prevent a powerful buyer in the field compelling, by reason only of his size, suppliers to give him preferred prices unrelated to any economies effected by quantity buying. The section purports to forbid any transaction of sale which discriminates among competitors by allowing a discount, rebate or allowance not available to other competitors from the same supplier of goods of like quality and quantity (paragraph (a)). It also prohibits the policy of selling goods in one area of Canada at prices which are lower than are charged by the same seller elsewhere in Canada for the purpose of destroying competition or eliminating competitors (paragraph (b)). Finally it bans the policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor (paragraph (c)). It was against paragraph (a) that the criticism was directed. It was said that the paragraph operated to prevent a supplier meeting spot competition by matching the price of a competitor. If a supplier has been selling to the trade at a certain price for a given quantity and a potential customer seeking a comparable quantity requests a better price from him because he can get such a better price from another supplier, then the first supplier may, it was argued, be prevented from meeting such spot competition by the operation of paragraph (a). It was said that the granting of a better price to a customer could be held to be discrimination against such other customers as may be competitors of the purchaser.

There has been no judicial interpretation to this effect but concern was expressed to us from a number of sources that this view might be taken of the paragraph.

We are of opinion that paragraph (a) is defective in being directed against a single transaction and that what should be forbidden is rather a course of action. This would allow a supplier freedom to meet spot competition while forbidding him to make it a practice to discriminate among his customers. We, therefore, recommend that paragraph (a) be re-drawn so as to make it clear that it is directed against a practice and not against a single transaction. "

The recommendation of the Committee was embodied in amending legislation passed by Parliament in 1952 and the Section now reads as follows:

"498A. (1) Every person engaged in trade, commerce or industry is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to



imprisonment for a term not exceeding two years or to both, who

- (a) is a party or privy to, or assists in, any sale that discriminates, to his knowledge, directly or indirectly, against competitors of the purchaser, in that any discount, rebate, allowance, price concession or other advantage, is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage, available at the time of such sale to such competitors in respect of a sale of goods of like quality and quantity;
- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, having or designed to have the effect of substantially lessening competition or eliminating a competitor in such part of Canada;
- (c) engages in a policy of selling goods at prices unreasonably low, having or designed to have the effect of substantially lessening competition or eliminating a competitor.

(2) It is not an offence under paragraph (a) of subsection one to be a party or privy to, or assist in any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

(3) The provisions of paragraph (a) of subsection one shall not prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society."

## 2. Appraisal

It has been considered desirable to review in some detail the background of Section 498A and particularly the background of paragraph (a), not with the view that such consideration would assist in determining what might constitute an offence under that paragraph, for the Commission does not feel that it should express any opinion on that point in the present case, but rather to indicate the situations which it was thought the legislation would tend to correct. It is clear that the Price Spreads Commission believed that price concessions which are not related to economies in production or distribution and which are secured solely because





of the power exerted by a buyer by reason of size might destroy that free competition which is in the public interest and might create conditions conducive to monopoly.

It is obvious that the evidence in the present case does not disclose a competitive situation involving two buyers of vastly different size. Whatever differences there may have been in the purchasing abilities of Richardson's Hardware and Stan Richardson Hardware can be said to be of relatively minor degree. At the same time it is necessary to keep in mind that the independent merchant with a single store is concerned with his competitive opportunity in the locality in which he carries on business and, of course, he could produce direct evidence only with respect to his own position. The Commission, therefore, does not in any way preclude from its consideration any aspects of the present case because of the limited nature of the relationship involved.

When a discount on "wares" was given first to the original Richardson firm it was entirely a special price concession, insofar as it is possible to determine from the available evidence. In this respect it may be regarded as an attempt to place J. W. Richardson Hardware in a more favourable position to compete with larger firms dealing in such hardware lines more or less on a wholesale basis. In fact, the discount of 10 and 5 per cent was stated on behalf of the Company to be the discount regularly given by the Company to jobbers. The Commission feels there is no reason to doubt that once the special discount of ten and five per cent was given by General Steel Wares Limited to J. W. Richardson Hardware it was continued to Richardson's Hardware through inertia and inattention until the changed circumstances were brought forcibly to the Company's attention through the efforts of Mr. J. S. Richardson to secure the same rate of discount in connection with his new retail business.

Although it has been contended on behalf of General Steel Wares Limited that the Company made available to Stan Richardson Hardware the same scale of price allowance on "wares" as was made effective in the case of Richardson's Hardware in 1949, it is the conclusion of the Commission that the conditions under which the price concessions could be obtained differed in some very important respects between the two retail firms. In the first place, for reasons which are described earlier in this Report, Richardson's Hardware received the discount on "wares" as a deduction on current purchases whereas in the offer made to Stan Richardson Hardware the rebate would be deferred until the end of the year and the rate of rebate would be dependent upon the volume of purchases made from General Steel Wares Limited by Stan Richardson Hardware during the year. Regardless of the fact that General Steel Wares Limited was convinced that the annual purchases by Richardson's Hardware would entitle that firm to the maximum



rate of discount of ten per cent, it is obvious that a discount allowed on current purchases is considerably more advantageous to a retailer than a rebate deferred until the end of a business year.

In the second place it has been shown by the evidence that for certain of its products General Steel Wares Limited selects some retailers to be "franchise" dealers and that Richardson's Hardware had been made a franchise dealer. Other classes of products made by General Steel Wares Limited such as "wares" are available to all retailers who wish to make purchases, whether or not they are franchise dealers. Although the discount involved in the present case was allowed only on purchases of "wares" the rate of discount was determined by taking the total volume of purchases of goods of all kinds during a year by a retailer from General Steel Wares Limited. This meant that a franchise dealer, such as Richardson's Hardware, was able to have included in its volume of purchases for the purpose of determining the rate of discount on "wares", the goods of General Steel Wares Limited which were bought under the franchise arrangement, whereas the volume of purchases by Stan Richardson Hardware necessarily was confined to a more limited range of goods. The same situation would prevail with respect to retailers in other districts some of whom might be franchise dealers and others not. In the normal course of business, a retailer who had the widest range of goods from which to make purchases would appear to have an advantage in building up a particular volume of purchases over a competing retailer whose purchases were necessarily limited to a smaller range of products. It is obvious that in some circumstances the advantage in accumulating a larger volume of purchases would be considerable.

Some question is raised by the evidence as to the extent to which General Steel Wares Limited made known to retailers with whom it dealt that it was prepared to grant a discount or rebate on "wares" to customers whose purchases during any year fell within specified volume classes. While it was stated in evidence by one officer of the Company that the "sliding scale applies to anybody" the same witness stated that the rebate was not allowed automatically, but that a retailer would have to initiate negotiations with the Company in order to secure the discount when his volume of purchases reached the required level. However, this witness did state that in some instances the Company has approached retailers whose volume of purchases came near the limits established to see whether they could increase their purchases so as to qualify for a rebate. A volume rebate which is not made known to all customers in like manner can hardly be said, as a matter of fact, to be available equally to all even though there are no distinctions among customers in the terms on which the rebate is granted once a claim has been established. Business operations are conducted on the basis of information available at the time, and a retailer who becomes aware at some later date of possible advantages which might have





influenced prior conduct may, in fact, have to forego the possibility of securing the advantage.

The situation disclosed in this inquiry resulted from the break-up of a family hardware business and the treatment by General Steel Wares Limited of one successor of part of that business as though it were the same business as the original firm and of a successor of another part of that business as a new and untried account. The special circumstances in this case are peculiarly local and narrow in character. In the absence of evidence which would indicate the manner in which such differential treatment as has been disclosed in this inquiry, would tend to operate if such special circumstances of family relationships were not present, the Commission has not attempted to draw any broad conclusions in terms of competitive business generally. It has been pointed out earlier in this report that business conduct in the larger sense is made up of the aggregate of local and individual business transactions and situations and that the incidence of any condition upon the individual business firm may provide a basis for appraising the effect of a particular practice from the viewpoint of the public generally. In the present case, however, the Commission does not feel that its conclusions should be carried further than those set out above.

(Sgd. ) C. R. Smith

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Chairman

(Sgd. ) A. S. Whiteley

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Member

(Sgd. ) Guy Favreau

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Member

Ottawa,  
May 28, 1953.











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Publications

HD Canada. Restrictive Trade  
9745 Practices Commission  
C33N62 Report concerning alleged  
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